

Office of Chief Counsel
Internal Revenue Service
memorandum
CC:NER:MAN:TL-N-1975-00
GMackey/PDarcy

date:

to: Chief, Exam Division
Attn: Helen Chin, International Examiner

from: District Counsel, Manhattan

subject:

████████████████████
Taxable years ended March 31, █████ and March 31, █████
Consents to Extend the Statute of Limitations on Assessment
UIL # 6501.08-09

DISCLOSURE STATEMENT

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This memorandum responds to your request for advice on how the Internal Revenue Service can enter into a valid agreement to extend the statute of limitations on assessment with the ██████████ ("taxpayer"), a Japanese corporation doing business in the United States. You are seeking to extend the statute of limitations on assessment for the taxable years ended March 31, █████ and March 31, █████. Based on a prior Form 872, the statute of limitations for the taxable year ended March 31, █████ expires on █████. The statute of limitations for the taxable year ended March 31, █████ expires on █████.¹

¹ The taxpayer filed its Form 1120F for the taxable year ended March 31, █████ on █████.

FACTS

The taxpayer is a Japanese bank with an office at [REDACTED]. For the relevant periods, the taxpayer filed U.S. Income Tax Returns of a Foreign Corporation ("Forms 1120F). Prior to [REDACTED] the taxpayer's New York office was the taxpayer's New York branch. On [REDACTED] the taxpayer's board of directors adopted a resolution downgrading the New York office from a branch of the bank to a representative office.

[REDACTED] as [REDACTED] signed the taxpayer's Forms 1120F for the periods ending March 31, [REDACTED] and March 31, [REDACTED]. Effective with the downgrading of the branch to a representative office on [REDACTED] [REDACTED]'s corporate title changed from [REDACTED] to [REDACTED]. The examiner represented to our office that [REDACTED] remains an officer of the taxpayer in spite of his change of title. The examination file contains an internal document from the taxpayer that provides specimen signatures of those officers of the company authorized to sign on behalf of the company and its branches and representative offices. This document has an effective date of [REDACTED]. [REDACTED]'s signature is among the signatures.

DISCUSSION

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the extension. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three-year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For income taxes, the form used by the Service to extend the limitations period on assessment is Form 872, Consent to Extend the Time to Assess Tax.

Regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents to extend the period of assessment executed under that section. The Service generally applies the rules applicable to execution of the original returns to consents to extensions of time to make an assessment. I.R.C. § 6062 provides generally that a corporation's income tax returns must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual signs the return is prima facie evidence that the individual is authorized to sign the return. See Rev. Rul. 83-41, 1983-1 C.B. 349.

The specimen signatures provided by the taxpayer indicate that as of [REDACTED] [REDACTED] was duly authorized to sign on behalf of the company. Furthermore, [REDACTED] signed the Forms 1120F filed for that taxable years ended March 31, [REDACTED] and March 31, [REDACTED]. Therefore, pursuant to Rev. Rul. 83-41, [REDACTED] can sign a Form 872 on behalf of the taxpayer.

CONCLUSION

For the taxable years ended March 31, [REDACTED] and March 31, [REDACTED], [REDACTED] may execute a Form 870 on behalf of the taxpayer.

If you have any questions, please call Gerard Mackey, the attorney assigned to this case, at 212-264-1595 Ext. 305.

LINDA R. DETTERY
District Counsel

By: _____

PETER J. LABELLE
Assistant District Counsel

Noted:

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